

## **PRACTICE AND PROCEDURE MANUAL**

### **SENIOR U. S. DISTRICT JUDGE THOMAS A. HIGGINS**

#### **I. Name and Brief Biography**

Judge Thomas A. Higgins was appointed United States District Judge for the Middle District of Tennessee in October 1984, and entered on duty December 3, 1984. He took senior status in February 1999. He was graduated from Christian Brothers College, receiving his A.A. degree in 1952; University of Tennessee, with a B.A. degree in 1954; and Vanderbilt University School of Law, receiving his LL.B. in 1957. He entered active duty as First Lieutenant in the United States Army in 1957 and was released in 1960 after serving in The Judge Advocate Generals Corps, at Fort Campbell, Kentucky, and the Pentagon.

Judge Higgins was a partner in the law firm of Willis & Higgins, Nashville, Tennessee, from 1960-61, and a partner in the law firm of Cornelius, Collins, Higgins & White from 1961-1984.

Judge Higgins is married to the former Geraldine Gallagher Crawford and has three children. He is a member of the American Bar Association; Tennessee Bar Association; and the Nashville Bar Association, of which he was secretary-treasurer in 1962, director in 1970-72, and president in 1971-72. He is a Fellow of the American College of Trial Lawyers.

#### **II. Preliminary General Matters**

##### **A. Scheduling**

Attorneys seeking changes in schedules should do so by motion. Judge Higgins will consider approving agreed orders, but he will not grant them automatically and rarely grants extensions of discovery deadlines.

##### **B. Correspondence with the Court**

The Local Rules require all communication with the Court to be filed with the Clerk's office. All correspondence relating to a case received directly by Judge Higgins' Office is filed as a part of the record.

##### **C. Telephone Conference with the Court**

Judge Higgins has no objection to telephone conferences regarding discovery disputes during depositions and pretrial conferences in cases involving out of town counsel or upon showing of good cause. Attorney requesting telephone conference shall be responsible for setting it up with the telephone operator and all parties/attorneys. There shall be no ex parte conferences.

##### **D. Telephone Conference with Law Clerks**

Judge Higgins does not permit telephone conferences with his law clerks.

#### **E. Pro Hac Vice Admissions**

Allowed if documentation is in order.

#### **F. Motion to Ascertain Status**

Judge Higgins prefers everything done in writing. He has no problem with anyone filing a motion for status.

### **III. Pretrial Matters - Civil Cases**

#### **A. Scheduling/Case Management Orders**

See specimen copy of case management orders for jury and nonjury cases, *Appendix 1*.

#### **B. Continuances and Extensions**

Judge Higgins rarely grants continuances and extensions unless there is a valid reason. All such requests should be made by motion and should clearly state the necessity for the change.

#### **C. Pretrial Motions**

##### **1. Referral to the Magistrate Judge**

Referred depending on Court's trial calendar.

##### **2. Oral Argument**

Oral argument may be allowed if it will serve some useful purpose.

##### **3. Briefs/Memoranda of Law**

Briefs are required. On summary judgment motions Judge Higgins requires strict compliance with Local Rule 8(b)(7). The moving party is required to list the asserted facts in numbered paragraphs with record citations; opposing counsel's statements must admit or deny the moving party's asserted facts, following the same order as the moving party with a precise citation to the record. In this way, whether or not there is a dispute of fact is crystal clear to the judge.

In each supporting memorandum, the movant shall list everything in the memorandum which is being relied upon in support of the motion. Also, all affidavits and attachments which are relied upon shall be filed and docketed separately with the Clerk's office. They shall not be submitted as attachments to the memorandum of law. The memorandum of law and motion shall be filed as separate documents.

##### **4. Chambers Copies of Filings**

All papers should be filed with the clerk. If it is a matter that will need Judge Higgins' immediate attention, this should be reported to the clerk and the file can be sent to his chambers. No courtesy copies shall be sent directly to chambers.

## **5. Proposed Orders**

These orders are helpful if there are specific facts which need to be included in the order, i.e., disbursement of funds.

## **D. Discovery**

### **1. Discovery Period and Extensions**

Judge Higgins expects the parties to meet the scheduling/case management order deadlines.

### **2. Interrogatory Responses**

Judge Higgins believes that it is very important to tailor interrogatories and their responses to fit the needs of the case. See specimen case management orders for parameters. (*Appendix 1*)

### **3. Resolution of Discovery Disputes**

Governed on a case by case basis. Judge Higgins expects good faith effort by counsel to resolve without court intervention. Counsel must try and fail to work out disputes before filing motions to compel, etc. He believes that most discovery disputes can be worked out between reasonable counsel if they use common sense.

Every case management order includes the following provision:

No motions related to discovery or for a protective order shall be filed until a discovery/protective order dispute conference has taken place and all attorneys of record attend and meet, face to face, in an effort to resolve the dispute and a jointly signed discovery/protective order dispute statement is submitted setting forth precisely the remaining issues in dispute and the reasons why those issues remain unresolved.

### **4. Confidentiality Agreements/Rediscovery Matters**

Usually approved as a matter of course. However, Judge Higgins generally will not approve the sealing of settlement agreements unless there is some compelling reason.

### **5. Expert Witnesses**

Judge Higgins requires strict adherence to Local Rule 12.

## **E. Settlement Conferences in Jury and Nonjury Cases**

Judge Higgins is agreeable to settlement conferences and they can serve a useful purpose only if the lawyers have first engaged in honest and hard bargaining.

## **F. Pretrial Briefs**

### **1. Form**

Judge Higgins encourages lawyers to write their papers with the thought that they are trying to convince someone, and that someone is actually going to read the papers and wants to make sense of them. Cases are expected to stand for the legal propositions for which they are cited, and lawyers should provide further explanation and analyses as needed. No brief in support of or in opposition to any proposition should exceed twenty (20) pages. The scheduling/case management order precludes the filing of reply briefs unless invited by the Court.

### **2. Scope in Nonjury case**

Requires proposed findings of fact and conclusion of law to be submitted to the courtroom deputy (not filed with the Clerk's office) by close of business the day preceding the trial or as directed by order of the Court.

### **3. Scope in Jury Case**

Briefs should cover any unique evidentiary issues anticipated and should include counsel's position and authorities in support of that position on anticipated questions of law. Attention should be given to any special jury verdict forms or jury instructions.

## **G. Pretrial Conference**

Judge Higgins will schedule a status conference if requested or if he believes it is needed. However, his normal procedure is to schedule a pretrial conference to discuss trial procedures and any final attempt by the Court to settle the case. Even if attorneys have submitted a proposed pretrial order before the pretrial conference, they will be expected to attend the pretrial conference unless released by order of the Court.

## **H. Injunctions**

### **1. Scheduling**

TROs are scheduled by the clerk; Preliminary Injunctions are scheduled on written application and are heard on oral testimony. Written Proposed Findings Of Fact And Conclusions Of Law are required to be filed prior to preliminary injunction hearing.

### **2. Expedited Discovery**

Judge Higgins will decide this based on facts of each case.

#### **IV. Pretrial Matters - Criminal Cases**

##### **A. Suppression Hearings**

Judge Higgins schedules these hearings well in advance of the trial date and makes every effort to hold the evidentiary hearing so as to avoid delays as to trial. If necessary, the evidentiary hearing will be held on Saturday.

##### **B. Motions**

Motions shall not be filed if the matter is covered by the standing discovery order.

##### **C. Pretrial Conference**

Judge Higgins will schedule a pretrial conference if requested or if he believes it is needed.

#### **V. Trial Procedure**

##### **A. Scheduling**

Judge Higgins is aware that matters are sometimes delayed because of other court proceedings. However, he believes that the only way to move the docket is to set many matters and to "keep the pipeline full."

##### **B. Out-of-Town Parties, Witnesses, or Attorneys**

Local counsel are expected to be ready to try the case.

##### **C. Motion in Limine**

Judge Higgins will usually reserve ruling on these motions until trial.

##### **D. Voir Dire**

Judge Higgins conducts the initial Voir Dire, and attorneys are permitted to ask appropriate follow-up questions so long as there is no attempt to try the case or brainwash the jury.

##### **E. Note-Taking by Jurors**

Judge Higgins permits jurors to take notes in every case.

##### **F. Opening Statements**

###### **1. Length**

Judge Higgins sets no time limit; however, opening statements should be direct and without any argument by counsel.

## **2. Use of Exhibits**

Counsel should show exhibits to be used during open statements to adversary counsel and the Court prior to beginning opening statement.

### **G. Side Bar Conferences**

Judge Higgins holds side bar conferences to avoid having the jury leave the courtroom unless it is a complicated matter that will take considerable time.

### **H. Videotaped Testimony**

This type of testimony is permitted. Attorneys should ensure that a properly edited tape is available to show to a jury.

### **I. Deposition Reading**

Both questions and answers should be read when deposition testimony is presented in a jury trial. In a nonjury trial simply submit it to the Court if it is lengthy.

### **J. Exhibits and Witnesses**

Exhibits should be pre-marked and furnished to opposing side. Copies of each party's exhibit list and witness list shall be provided to the courtroom deputy, court reporter and opposing counsel on the first day of trial.

### **K. Motion for Verdict as Matter of Law**

These motions should be made in the normal course under the Federal Rules of Civil Procedure.

### **L. Proposed Jury Instructions and Verdict Forms**

Attorneys shall furnish requested instructions and verdict forms to the Court on the morning of the first day of trial.

### **M. Proposed Findings of Fact and Conclusions of Law**

Judge Higgins requires proposed findings of fact and conclusions of law to be submitted directly to the courtroom deputy (not filed with the Clerk's office) by close of business the day preceding the trial or as directed by order of the Court.

### **N. Offers of Proof**

To avoid delay, Judge Higgins will sometimes schedule offers of proof at the end of the day.

## **O. Jury Deliberation**

### **1. Copy of Instructions**

The jury instructions will be provided counsel before they argue their case at a charge conference at the conclusion of all the evidence. The jury is furnished with copies of the court's charge.

### **2. Access to Exhibits**

All admitted exhibits, subject to No. 3 below, will be sent to the jury room.

### **3. Access to Transcripts of Testimony or Videotaped Testimony**

Usually Judge Higgins will not permit the jury access to such transcripts or videotapes during its deliberations.

### **4. Availability of Counsel**

Counsel must be available to appear in court without delay while the jury is deliberating.

### **5. Taking the Verdict and Special Interrogatories**

### **6. Polling the Jury**

Judge Higgins will always poll the jury individually on their findings.

### **7. Interviewing the Jury**

Judge Higgins will not allow this unless a good reason is advanced for allowing interview in specific case. See Local Rules of Court.

## **VI. Sentencing in Criminal Cases**

Judge Higgins requires the attorney and defendant to go over the pre-sentence report together well in advance of sentencing.

## **VII. Other Comments**